Office-Supreme Court, U.S.
FILED
APR 16 1964
JOHN F. DAVIS, CLERK

No. 1012

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

LANGDON GATES,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

JULIUS LUCIUS ECHELES
30 North LaSalle Street
Chicago 2, Illinois
Attorney for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No.

LANGDON GATES,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To the Honorable the Chief Justices of the Supreme Court of the United States:

Petitioner Langdon Gates respectfully prays that a writ of certiorari be issued to the Supreme Court of Illinois to review its decision affirming a judgment of conviction in the Criminal Court of Cook County, Illinois, adjudging petitioner guilty of receiving stolen property, to-wit ten hairdryers, each of the value of $8.95 and sentencing him to a term of from one to five years.

The Supreme Court of Illinois in its decision reversed the conviction of the petitioner on three other counts of the indictment charging him with conspiracy with two other defendants.

OPINION BELOW

Trial was had to the court without a jury; no written opinion was delivered.

The Opinion of the Supreme Court is set out at pages 11 to 13 of the record filed herein, and is reported in ..... Ill. 2nd ....., 195 N.E. 2d 161. It is also printed in this Petition as Appendix "A". Petition for rehearing was denied on January 20, 1964.

JURISDICTION OF THIS COURT

1. The date of judgment sought to be reviewed was entered on November 26, 1963 (R. 10). The petition for rehearing was denied on January 20, 1964 (R. 18). This petition for a writ of certiorari is filed within ninety days from the denial of the petition for rehearing.

2. This court's jurisdiction is invoked under Title 28, U. S. Code, Section 1257(3) and Rule 22(1) of the Rules of this court.

QUESTIONS PRESENTED FOR REVIEW

1. Were the petitioner's rights to a fair trial in accordance with due process of law under the Fourteenth Amendment violated when evidence in a joint trial with two other defendants in a conspiracy case was admitted on the conspiratorial theory, but on which conspiracy counts the Supreme Court of Illinois reversed the conviction of petitioner?

2. May a conviction be sustained upon evidence which, by a decision of the Supreme Court of Illinois, would have been inadmissible in the trial in chief.

3. Where the petitioner was convicted on four counts of an indictment, one a substantive count of receiving ten hairdryers knowing the same to have been stolen, each of the value of $8.95, and on three conspiracy counts, and where the Supreme Court of Illinois reversed the conviction on the three conspiracy counts, stating that there was no evidence that petitioner conspired with the other two defendants, may the conviction on the substantive count stand where the trier of the facts considered a mass of prejudicial hearsay evidence admissible only on the conspiratorial theory of the prosecution?

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE.

Petitioner was charged in six counts of an indictment along with two other defendants, Victor Spilotro, and Ronald Hansen, with receiving stolen property, to-wit ten hair dryers each of the value of $8.95 in two counts, and with conspiracy to perform certain illegal acts in four counts (R. 3, pp. 1-2).[1] Count 2, a substantive count and Count 6, a conspiracy count, were dismissed at the end of the State's case (R. 3, p. 2). He was found guilty of receiving stolen property of the value of $89.50 as charged in Count 1 and found guilty of conspiracy in Counts 3, 4 and 5 (R. 3, pp. 2-3).

In brief, the evidence at the trial consisted of the testimony of one Ronald Narbut who testified that Gates offered him some hairdryers and steam irons for sale (R. 3, p. 29). Narbut had previously contacted co-defendant Hansen who was in the company of co-defendant Spilotro when Narbut had conversations with Hansen and Spilotro about stolen accordions (R. 3, p. 23) about diamonds (R. 3, p. 25). Later Narbut spoke to them about the steam irons and hairdryers (R. 3, pp. 30-31).

Gates was never present at any of the conversations between Narbut and co-defendants Spilotro and Hansen. Evidence which had no pertinence to the substantive charge alleged in the indictment was admitted against Gates on the conspiratorial theory of the State (R. 3, p. 67).

[1] "R" refers to the Record as filed in this court; the pages indicated refer to the printed material found at the Record page number.

The argument of the State's Attorney to the court was as follows:

> "We believe that the state has made out a case and as far as the legal matter, whether a conspiracy is shown, it is not necessary that all the conspirators actually came together, even if they knew each other. The rule is that they pursued the same common object and they were all receiving stolen property." (Original Tr. of Pr., p. 653).

The Supreme Court of Illinois decided that there was no evidence the petitioner conspired with his co-defendants; and, therefore, the court reversed the judgments of conviction on the three counts of conspiracy (R. 13).

REASONS FOR THE ALLOWANCE OF THE WRIT

Legally inadmissible evidence was used by the state to convict the petitioner. His rights to a fair trial in accordance with due process of law were violated.

The due process clause of the Fourteenth Amendment to the Constitution was violated when the State of Illinois convicted the petitioner upon legally inadmissible evidence.

The state tried and convicted the defendant on three conspiracy counts (R. 3, p. 3). The state depended upon the conspiracy theory, for a mass of evidence was introduced against Gates which applied only to co-defendants Hansen and Spilotro and could only be received by the court upon the State's conspiratorial theory. Yet, the Supreme Court of Illinois ruled (R. 13):

> "Defendant's remaining contention—that he was not proved to have participated in a conspiracy—must be sustained. There is no evidence that he had even met his co-defendants until after each had been arrested, nor is there proof that he conspired with Narbut. To establish a conspiracy there must be a common design; a concert of will and endeavor on the part of two or more persons with the view to attaining the same unlawful object (citing cases). While it may properly be inferred from the evidence at the case at bar that defendant received hairdryers and irons from the 'hijackers' knowing them to have been stolen, there is no evidence whatever that he did so in common design with Narbut or that they had agreed or joined in a common design to do so. The mere fact that he subsequently sold some of the goods to Narbut or the latters friends does not establish the conspiracy charged. A conspiracy cannot be shown by evidence of a mere relationship or transaction between parties." (See Appendix "A").

True, the Supreme Court of Illinois held there was sufficient evidence upon which to sustain the conviction as to the substantive count in the indictment, the charge that petitioner received ten hairdryers of the value of $8.95 apiece knowing the same to have been stolen. But it is not certain that the mass of inadmissible evidence did not contribute to their conviction on the substantive count. *United States* v. *Bentvena*, 2 Cir., 319 F. 2d 916 (1963).

In *Bentvena*, thirteen defendants were on trial for conspiracy to violate the narcotic laws and for substantive offenses of either selling or possessing narcotics. Evidence was received in the case under the government's conspiratorial theory. The Court of Appeals held that as to three of the defendants, no conspiracy was shown, but that there was evidence to justify the verdicts of guilty as to the substantive offenses. Nonetheless, the Appeals Court reversed, holding, p. 955:

> "The trial of Bentvena, Struzzieri and Monastersky, together with those indicted and tried only for conspiracy under the circumstances here portrayed, we feel, constituted prejudicial error as to them. The proof of their participation in the transactions alleged in the substantive counts was presented at the start of the government's case. Thereafter, they and the jury were forced to sit through most of testimony establishing the conspiracy, none of which related to the substantive accusations. *We cannot feel confident that the admission of this evidence against them, when it was legally inadmissible unless they were shown to be part of the conspiracy, did not contribute to their convictions on the substantive counts by blackening them with general guilt.*" (Emphasis added)

When the Supreme Court of Illinois ruled that the evidence against Gates as to the three conspiracy counts was insufficient in law, it is apparent that petitioner never

should have been joined in the same indictment. The remedy which the Supreme Court should have adopted was to return the case to the trial court for a new trial on the one substantive count remaining.

This court was sensitive to the effect of prejudicial misjoinder of defendants when it reversed the conviction in *Kotteakos* v. *United States*, 328 U.S. 750, where separate conspiracies were shown. Here, there was only one conspiracy shown, but petitioner was not part of that conspiracy. Certainly, prejudice is greater under circumstances such as here than in *Kotteakos*.

CONCLUSION.

It has been aptly said that a conspiracy charge is the darling and the handmaiden of the prosecutor. It surely was demonstrated in this case.

This court has never ruled precisely on this point, as there is no holding in this court on the *Bentvena* situation. *Schaeffer* v. *United States*, 362 U.S. 511, comes close to deciding the precise question here, but the factual situation there was different than that presented here.

We respectfully pray that your Honors will allow the petition.

Respectfully submitted,

JULIUS LUCIUS ECHELES,
Attorney for Petitioner.

APPENDIX A

Docket No. 37680—Agenda 29—September, 1963.

The People of the State of Illinois, Defendant in Error, v. Langdon Gates, Plaintiff in Error.

MR. CHIEF JUSTICE KLINGBIEL delivered the opinion of this court:

Langdon Gates, hereinafter called defendant, was indicted jointly with Ronald Hansen and Victor Spilotro for the crimes of receiving stolen property and conspiracy to receive stolen property. After trial without a jury the criminal court of Cook County found them guilty, and each was sentenced to the penitentiary for one to five years under each of several counts of the indictment, the sentences to run concurrently. Hansen and Spilotro prosecuted writs of error for review; and after consolidating the two cases this court affirmed the convictions. (*People* v. *Hansen*, 28 Ill. 2d 322.) Gates has now sued out a writ of error to review his conviction.

He contends the State failed to prove ownership or value of the property, and failed to prove that it was stolen or that defendant knew it was stolen. He also assigns as error that improper evidence was considered against him, and that the evidence fails to show he was involved in a conspiracy. On the writs of error prosecuted by his co-defendants this court considered and rejected contentions that the prosecution failed to prove this property was stolen, and failed to prove either its ownership or its value. There is nothing in the presentation of the same contentions here that requires a different result, and it is unnecessary to discuss them again. There remain the questions whether improper evidence was considered, and whether the evidence sufficiently proved that he knew the property had been stolen and that he participated in a conspiracy.

The facts are fully stated in the *Hansen* opinion, and need not be related in detail here. It appears by the testimony of one Ronald Narbut, a confessed burglar, that on or about September 8, 1961, he had a conversation with defendant wherein the latter told him some friends had hijacked a truckload of appliances and had some hair dryers and irons for sale, and that defendant asked Narbut to see if "the cop and his friend" would be interested in buying them.

Narbut thereafter had a meeting with Hansen (a police officer) and Spilotro at a restaurant. Defendant followed in his own car but did not go in. In the restaurant Narbut was told that Hansen and Spilotro were unable to get in touch with the people who were going to buy "the stuff", but that they themselves would take five hair dryers and five irons apiece. Narbut was given $110 and was told to deliver the appliances to Hansen's home. He rejoined defendant, who advised him that the irons were in storage and not immediately available. However defendant brought over ten hair dryers, after receiving $90 from Narbut. They were packed in two cartons of six each, and on the top of the carton there appeared the words "Jewel Tea Company, Jewel Park, Barrington, Illinois, on 8/23/61," together with the number 11825. Five of the hair dryers were subsequently discovered in Hansen's home after a search by other police officers. The ten in question had been part of a shipment consigned to the Jewel Tea Company in Barrington, and as we determined in the *Hansen* case they were sufficiently proved to have been stolen from a loading dock in Chicago.

Defendant's contention that he was not proved to have known the property was stolen is without merit. If Narbut's testimony is to be believed defendant told him in so many words that some of his friends had "hijacked" a

truck and that he had some hair dryers and steam irons to sell. Narbut further testified to previous dealings in stolen property with defendant. Even though the testimony is that of a self-confessed criminal, this court cannot reject it as being unworthy of belief, as urged by defendant. While the testimony of an accomplice of this kind is to be received with great caution, the question whether it should be believed is primarily one for the trier of fact. (*People* v. *Wagman*, 311 Ill. 330; *People* v. *Nitti*, 8 Ill. 2d 136.) In the *Hansen* case we considered at length the credibility of this same witness and his testimony, and found no ground for disturbing the trial court's judgment in the matter. There is no basis for a different conclusion here.

Moreover Narbut's testimony does not stand entirely without corroboration. Defendant's testimony that he had purchased the hair dryers from one Sam Schulman of the Crest Jewelry Store was contradicted by Schulman, and another merchant was produced by the State who testified that defendant had attempted to sell him 300 hair dryers and 300 irons. The guilty knowledge which is an essential element of the crime of receiving stolen property is rarely susceptible of direct and positive proof. It is sufficiently shown if it may be inferred from all the surrounding facts and circumstances involved in the transaction, including the acts and declarations of the accused concerning the same. (*People* v. *Mulford*, 385 Ill. 48.) We think the record sufficiently sustains defendant's conviction for the crime of receiving stolen property.

Defendant further insists that error was committed in receiving and considering as evidence against him testimony relating to various events and transactions with which he had no connection. The contention is without merit. In all but one instance there was no objection to

the introduction of the evidence. In that one instance testimony was given by Narbut which related to his arrest in August 17, 1961, and a conversation between him and Hansen at which defendant Gates was not mentioned. Defendant has not shown how this prejudiced him, and under the present circumstances no reversible error could have resulted from admitting this evidence. *People* v. *Green*, 27 Ill. 2d 39.

Defendant's remaining contention—that he was not proved to have participated in a conspiracy—must be sustained. There is no evidence that he had even met his co-defendants until after each had been arrested, nor is there proof that he conspired with Narbut. To establish a conspiracy there must be a common design; a concert of will and endeavor on the part of two or more persons with a view to attaining the same unlawful object. (See: *People* v. *Lank*, 365 Ill. 266, 281; *People* v. *Bain*, 358 Ill. 177, 190; *People* v. *Walczak*, 315 Ill. 49, 53.) While it may properly be inferred from the evidence in the case at bar that defendant received hair dryers and irons from the "hijackers" knowing them to have been stolen, there is no evidence whatever that he did so in common with Narbut or that they had agreed or joined in a common design to do so. The mere fact that he subsequently sold some of the goods to Narbut or the latter's friends does not establish the conspiracy charged. A conspiracy cannot be shown by evidence of a mere relationship or transaction between parties. *People* v. *Mulford*, 385 Ill. 48, 54.

The judgment of the criminal court of Cook County is affirmed as to the count charging defendant with the crime of receiving stolen property. It is reversed insofar as it finds him guilty of participating in a conspiracy to receive stolen property.

Affirmed in part and reversed in part.